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Schwegman, Lundberg, Woessner & Kluth, P.A.
P.O. Box 2938
Minneapolis, MN 55402

In re Application of :
SMITH, et al. :
PCT No. PCT/GB05/50169 : DECISION ON PETITION
Application No. 10/578,786 :
Int. Filing Date: 29 September 2005 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1365.107US1 :

This is a decision on the "Petition to Add Unintentionally Delayed Claim of Priority Under 35 U.S.C. 120 And 37 C.F.R. § 1.78(a)(3)" filed 23 March 2007. An examination of the petition finds that it is in fact a request to accept two unintentionally delayed foreign priority claims. Because petitions under 37 CFR 1.78(a)(3) are limited to acceptance of delayed claims to U.S. nonprovisional applications and international applications designating the United States, and petitioner has not requested acceptance of an such claim, the petition under 37 CFR 1.78(a)(3) is **DISMISSED as moot.**

Petitioner should note that the petition procedure under 37 CFR 1.55 (c) to accept an unintentionally delayed claim of foreign priority is not available in U.S. National stage applications. Foreign priority in U.S. National stage applications is governed by 35 U.S.C. 365 (b). See also Manual of Patent Examining Procedure (MPEP) 1893.03(c):

If the priority claim in the national stage application is to an application, the priority of which was not claimed in the international stage of the international application, the claim for priority must be denied for failing to meet the requirements of the Patent Cooperation Treaty, specifically PCT Rule 4.10.

For a comparison with 35 U.S.C. 119(a)-(d) priority claims in a national application filed under 35 U.S.C. 111(a), see MPEP § 1895.01.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PCT
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop PCT
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-0459
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Derek A. Putonen at (571) 272-3294.



Boris Milef
Senior Legal Examiner
Office of PCT Legal Administration

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